

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LEAGUE OF WILDERNESS
DEFENDERS/BLUE MOUNTAINS
BIODIVERSITY PROJECT, an Oregon
nonprofit corporation, and CASCADIA
WILDLANDS PROJECT, an Oregon
nonprofit corporation,

Plaintiffs,

CV. 04-982-PK

OPINION AND ORDER

v.

UNITED STATES FOREST SERVICE, an
agency of the United States Department of
Agriculture,

Defendant.

PAPAK, Magistrate Judge:

This matter comes before the court on Plaintiffs' Motion to Strike Defendant Forest Service's Exhibit B, Exhibit C, and Exhibit E (#53). After reviewing Plaintiffs' memoranda and Defendant's response, the court grants Plaintiffs' motion as to Exhibit E, see Southwest Center for Biological Diversity v. U.S. Forest Service, 100 F.3d 1443, 1450-51 (9th Cir. 1996) (finding a

letter to Forest Supervisors from the Regional Forester to be a post-hoc rationalization and not an interpretation of law in effect at the time the salvage timber sale was approved). The court denies Plaintiffs' Motion as to Exhibit B as a document that was before the agency when a decision was made. As to Exhibit C, the court denies Plaintiffs' Motion but limits the use of Exhibit C to guidance on how the regulations and provisions applicable to this case should be construed.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Strike (#53) is GRANTED as to Exhibit E, and DENIED as to Exhibit B and Exhibit C.

Dated this 12 day of January, 2006.

/s/
Honorable Paul Papak
U.S. Magistrate Judge